

KARIN G. PAGNANELLI (SBN 174763)
kgp@msk.com
MARC E. MAYER (SBN 190969)
mem@msk.com
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

Attorneys for Defendant
SONY CORPORATION, a Japanese
Corporation

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

CYBERSitter, LLC, a California limited
liability company, d/b/a Solid Oak
Software,

Plaintiff,

v.

THE PEOPLE'S REPUBLIC OF
CHINA, a foreign state; ZHENGZHOU
JINHUI COMPUTER SYSTEM
ENGINEERING LTD., a Chinese
corporation; BEIJING DAZHENG
HUMAN LANGUAGE
TECHNOLOGY ACADEMY LTD., a
Chinese corporation; SONY
CORPORATION, a Japanese
corporation; LENOVO GROUP
LIMITED, a Chinese corporation;
TOSHIBA CORPORATION, a Japanese
corporation; ACER INCORPORATED,
a Taiwanese corporation; ASUSTeK
COMPUTER INC., a Taiwanese
corporation; BenQ CORPORATION, a
Taiwanese corporation; HAIER GROUP
CORPORATION, a Chinese
corporation; DOES 1-10, inclusive,

Defendants.

Case No. CV 10-0038 JST (SHx)

The Honorable Josephine Staton Tucker

**NOTICE OF MOTION AND
MOTION OF DEFENDANT SONY
CORPORATION TO DISMISS THE
ACTION ON GROUNDS OF *FORUM
NON CONVENIENS***

**MEMORANDUM OF POINTS AND
AUTHORITIES AND
DECLARATIONS OF TAKASHI
HAGIWARA, RYOSUKE
AKAHANE, JACQUES DELISLE,
AND MARC E. MAYER IN
SUPPORT**

**[PROPOSED] ORDER LODGED
CONCURRENTLY HEREWITH**

DATE: November 8, 2010

TIME: 10:00 a.m.

CTRM.: 10A (Santa Ana Courthouse)

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2
3 **PLEASE TAKE NOTICE** that, on November 8, 2010, in the courtroom of
4 the Honorable Josephine Staton Tucker of the United States District Court for the
5 Central District of California, 411 West Fourth Street, Room 10A, Santa Ana, CA
6 92701-4516, at 10:00 a.m., or as soon thereafter as the matter may be heard,
7 Defendant Sony Corporation shall, and hereby does, move the Court to dismiss the
8 action on the grounds of *forum non conveniens*.

9
10 This Motion is made on the grounds that California is an inconvenient forum
11 and that, in the interest of substantial justice, the parties' dispute should be heard at
12 the relevant court in China¹, including because (1) the court in China is an
13 adequate available alternative forum, and (2) the "public" and "private" *forum non*
14 *conveniens* factors overwhelmingly favor litigation of this dispute in a court in
15 China. Lockman Found. v. Evangelical Alliance Mission, 930 F.2d 764, 767 (9th
16 Cir. 1991). Among other things, (a) the events alleged to give rise to this action
17 took place in China; (b) the action arises largely under Chinese, Taiwanese, and
18 Japanese law (and not under the laws of the United States); (c) the dispute arises
19 out of a mandate issued by a ministry of the People's Republic of China; (d) the
20 state of the People's Republic of China is a Defendant and has a significant interest
21 in this lawsuit; (e) the relevant witnesses are located in China; (f) the relevant
22 documents are in China; (g) all of the defendants are located outside the United
23 States, in China, Hong Kong, Taiwan, or Japan; and (h) the United States has little
24 interest in this dispute.

25
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27
28 ¹ For purposes of this Motion, "China" shall refer to the Mainland of the People's
Republic of China, not including Hong Kong, Macau and Taiwan.

1 This Motion is based on this Notice of Motion and Motion; the attached
2 Memorandum of Points and Authorities; the Declarations of Takashi Hagiwara,
3 Ryosuke Akahane, Jacques deLisle, and Marc E. Mayer; all papers and pleadings
4 on file in the action; any reply papers; and any oral argument that the Court may
5 entertain at the hearing on this Motion.

6
7 This Motion is made following a conference of counsel pursuant to Local
8 Rule 7-3 which took place on September 3, 2010.

9
10 Dated: September 13, 2010

KARIN G. PAGNANELLI
MARC E. MAYER
MITCHELL SILBERBERG & KNUPP LLP

11
12
13 By: /s/ Marc E. Mayer

14 Marc E. Mayer
15 Attorneys for Defendant
16 SONY CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

This is precisely the type of case that the doctrine of *forum non conveniens* was developed to address. The claims in this action consist almost entirely of copyright infringement claims arising under foreign law, based on alleged conduct in China, against nine foreign companies and the foreign state of the People's Republic of China ("PRC"). All of the relevant events took place abroad (largely in China), virtually all of the witnesses and documents are in China, and all of the defendants are in China, Hong Kong, Taiwan, or Japan. And, if the foregoing alone was not sufficient, all of the alleged conduct at issue in this action was undertaken pursuant to a mandate issued by a ministry of the PRC concerning the sales of computers in China. Thus, the issues presented in this action involve (and require adjudication of) matters of great interest to the PRC and the Chinese public, while they bear little, if any, connection to the United States (which is not home to any of the defendants and is not the site of the conduct alleged in the Complaint) or to this Court.

At the heart of this action is a May 19, 2009 Mandate (the "Green Dam Mandate") issued by the Ministry of Industry and Information Technology ("MIIT") of the PRC, requiring that as of July 1, 2009, all personal computers ("PCs") sold in China be pre-installed or packaged with certain internet filtering software known as the "Green Dam Youth Escort" ("Green Dam"). See Declaration of Marc E. Mayer ("Mayer Decl."), Exs. A & B. Green Dam allegedly was created, developed and licensed by two Chinese companies, Zhengzhou Jinhui Computer System Engineering Ltd. ("Jinhui") and Beijing Dazheng Human Language Technology Academy Ltd. ("Dazheng") (collectively, the "Chinese Developers"), in cooperation with the PRC. Plaintiff's claims in this action arise from the alleged conduct of the PRC and the two Chinese Developers, which Plaintiff alleges collectively infringed its copyright in its software filtering

1 program known as CYBERSitter by using portions of CYBERSitter in Green Dam
 2 without authorization. Although this case has been pending for more than eight
 3 months, none of these Chinese entities has been served with the Complaint or has
 4 appeared in this action.

5 In an effort to sidestep complex issues of sovereign immunity and
 6 international comity, and knowing that the PRC and the Chinese Developers are
 7 unlikely to appear in this action (and in fact are unlikely to be subject to
 8 jurisdiction in the United States), Plaintiff also has sued seven foreign computer
 9 manufacturers (the “Foreign Manufacturers”). Of these Foreign Manufacturers,
 10 two (Sony Corporation and Toshiba Corporation) are Japanese corporations, one
 11 (Lenovo Group Limited) is a Hong Kong corporation, one (Haier Group
 12 Corporation) is a Chinese corporation, and three (AsusTek Computer, Inc., BenQ
 13 Corporation, and Acer Incorporated) are Taiwanese corporations. Not one of the
 14 Foreign Manufacturers – or any other defendant in this case – is a United States
 15 entity.

16 Plaintiff acknowledges that the Foreign Manufacturers (including Sony
 17 Corporation) did not participate in the development of Green Dam (Complaint,
 18 ¶ 30) or in the issuance of the Green Dam Mandate (Complaint, ¶ 36),² and none is
 19 alleged to have engaged in any allegedly infringing activity (or, for that matter, any
 20 conduct at all) within the United States. Instead, each of the Foreign
 21 Manufacturers has been sued under Chinese (and Japanese or Taiwanese)
 22 copyright law (*not* under U.S. copyright law) based on allegations that they
 23 distributed, *in China*, PCs pre-installed or packaged with Green Dam as required
 24 by the PRC’s Green Dam Mandate.

25 As a threshold matter, Sony Corporation has no place in this lawsuit. In
 26 addition to the fact that Sony Corporation did not develop (or participate in

27 ² Plaintiff’s President, Brian Milburn, publicly acknowledged that the computer
 28 companies that distributed Green Dam “are not really the bad guys here.” Mayer
 Decl., Ex. C.

1 developing) Green Dam, Sony Corporation is a Japanese company that does not
2 distribute or sell PCs in China (including the PCs at issue in this action). Rather,
3 the distribution and sale of Sony PCs in China is overseen and undertaken by a
4 separate legal entity, Sony (China) Limited (“Sony China”), an indirect subsidiary
5 of Sony Corporation that is headquartered in Beijing, China. Sony China is not
6 subject to personal jurisdiction in the United States, has not been named as a
7 defendant in this action, and has never received any correspondence from Plaintiff
8 concerning its claims in this action.

9 The foregoing aside, for the following reasons (among others), this case does
10 not belong in this Court:

11 • Each of the Defendants is a foreign entity, located and/or with its
12 principal place of business outside the United States. This includes the Chinese
13 Developers, which are located in China, and upon whose conduct the alleged
14 liability of the Foreign Manufacturers is premised.

15 • All of the conduct at issue – namely, the creation of Green Dam and
16 its distribution in China – took place outside the United States, and, in fact,
17 exclusively in China. Likewise, all of Plaintiff’s claimed damages are premised on
18 alleged profits obtained, or licensing fees lost, in China.

19 • All of Plaintiff’s infringement claims in this action against the Foreign
20 Manufacturers arise not under United States law, but under Chinese (and, to a
21 lesser extent, Japanese or Taiwanese) law. Thus, to adjudicate this action, this
22 Court (and a California jury) would be required to analyze and interpret three sets
23 of foreign copyright laws, as well as the relationship between these foreign laws
24 and the Green Dam Mandate and the scope of sovereign immunities under these
25 laws.

26 • Virtually every witness with knowledge of the distribution of Sony
27 personal computers in China is located in China (with a few witnesses potentially
28 located in Japan). Likewise, relevant documents – including any documents

1 reflecting communications between Sony China and the PRC or the distribution
2 and sale of computers in China – are located in China and are written largely in
3 Chinese.

4 • Third party witnesses and documents will be largely or entirely
5 inaccessible if this case proceeds in California.

6 By contrast, a court in China is an adequate, available, and, indeed, a far
7 more appropriate forum for this dispute. Sony Corporation (even though not a
8 proper party) will not contest jurisdiction in China if Plaintiff files a lawsuit in this
9 matter, nor will the Taiwanese defendants or Toshiba.³ Similarly, while the PRC
10 and the Chinese Developers have not been served in this action (and claims against
11 the PRC likely are barred by the Sovereign Immunities Act), each of these
12 defendants is present in China and almost certainly subject to jurisdiction there (as
13 is Sony China). Perhaps most critically, because all of the Foreign Manufacturers’
14 alleged conduct was undertaken pursuant to the Green Dam Mandate and with the
15 authorization of (and, indeed, as required by) the MIIT, a ministry of the PRC, the
16 case inevitably will require interpretation and application of Chinese law, including
17 the relationship between the MIIT’s decrees and Chinese copyright law. Thus,
18 China’s interest in this action is significant, while this Court’s interest is nominal,
19 at best.

20 In circumstances such as this, U.S. courts do not hesitate to dismiss lawsuits
21 in favor of litigation in China. See, e.g., Sinochem Int’l Co. v. Malaysia Int’l
22 Shipping Corp., 549 U.S. 422, 435-36 (2007); In re Compania Naviera Joanna SA,
23 569 F.3d 189, 205 (4th Cir. 2009). In fact, the Ninth Circuit has held dismissal of
24 analogous copyright claims on *forum non conveniens* grounds to be appropriate in
25 far less compelling circumstances. In Lockman Foundation v. Evangelical

26 ³ Of course, Sony Corporation and the other defendants reserve their rights to raise
27 all other defenses and arguments in any lawsuit filed in China by Plaintiff in this
28 matter, including that they are not proper parties. Furthermore, for the sake of
clarity, the agreement not to contest jurisdiction in this matter does not extend to
any other lawsuits that may be filed in China.

1 Alliance Mission, 930 F.2d 764, 769-70 (9th Cir. 1991), the Court found that
2 copyright claims arising from the alleged unauthorized distribution of the
3 plaintiff's copyrighted works in Japan were properly litigated in Japan, even
4 though the plaintiff was a California entity, because of Japan's significant interest
5 in its copyright laws, the burden on the parties of litigating in California, and the
6 nominal interest of the California courts in adjudicating infringement claims
7 arising from conduct in Japan. But unlike Lockman, which involved a single
8 defendant located in the United States (which had a preexisting relationship with
9 the plaintiff), this case does not involve *any* U.S. defendants, but rather ten *foreign*
10 defendants – including the PRC, a foreign state. Moreover, the resolution of this
11 dispute will require analysis of a set of complicated and important questions of
12 Chinese law, including whether the Foreign Manufacturers can be held liable for
13 complying in China with official directives issued by the MIIT of the PRC.

14 The only connection between this action and this Court is that Plaintiff is
15 located in Southern California. But because Plaintiff does not seek redress for
16 conduct committed by U.S. defendants or within U.S. borders, and does not seek to
17 vindicate any rights under United States copyright law against Sony Corporation or
18 the other Foreign Manufacturers, its choice of forum cannot outweigh the
19 enormous countervailing interests in having this dispute adjudicated by a court in
20 the jurisdiction where a government mandate gave rise to the conduct at issue,
21 where the allegedly infringing conduct occurred, and where the witnesses and
22 documents are located. To force ten foreign defendants to incur the significant
23 expense of litigating in this Court under these circumstances would be
24 unprecedented, not to mention unfair.

25 For these reasons, as well as those set forth below, the Court should dismiss
26 the action on the grounds of *forum non conveniens*.

1 **I. STATEMENT OF FACTS.**

2 **Sony Corporation and Sony China.** Sony Corporation is a Japanese
3 Corporation headquartered in Tokyo, Japan. Sony Corporation produces and
4 distributes personal computers (sold under the brand name VAIO), digital video
5 cameras, digital still cameras, televisions, audio players, Blu-ray disc players, and
6 a variety of other electronic devices and products. Declaration of Ryosuke
7 Akahane (“Akahane Decl.”), ¶ 3.

8 Sony Corporation does not distribute personal computers for sale in China.
9 Akahane Decl., ¶ 4. Rather, the distribution of VAIO personal computers in China
10 is undertaken and overseen by Sony China. Id. Sony China, an indirect subsidiary
11 of Sony Corporation, is a Chinese corporation headquartered in Beijing, China. Id.
12 Sony China employed 1,751 people as of the end of June 2010, most of whom are
13 Chinese nationals. Declaration of Takashi Hagiwara (“Hagiwara Decl.”), ¶ 3.
14 Sony China is not a defendant in this action, has never been contacted by Plaintiff
15 (Hagiwara Decl., ¶ 6), and is not subject to personal jurisdiction in the United
16 States.

17 **The Green Dam Mandate.** On or about May 19, 2009, the MIIT issued the
18 Green Dam Mandate, which required that starting on July 1, 2009, all PCs
19 manufactured or sold in China have Green Dam preloaded (either pre-installed on
20 the computer’s hard drive or enclosed on an optical disc attached to the computer).
21 Mayer Decl., Exs. A & B. Additionally, the Green Dam Mandate required
22 computer manufacturers to “report to the Software Service Department of MIIT the
23 previous month’s computer sales volume at monthly basis within 2009.” Id. See
24 also Complaint, ¶ 36.⁴ Failure to comply with the Green Dam Mandate would
25 result in penalties or “correction[al] measures.” Mayer Decl., Exs. A & B.

26
27 ⁴ The Complaint alleges that on June 30, 2009, the day before it was scheduled to
28 take effect, the MIIT announced that implementation of the Green Dam Mandate
would be delayed. Complaint, ¶ 38. The Complaint also alleges that on
August 12, 2009, the MIIT issued a statement that it did not intend to reinstate the
Green Dam Mandate. Id.

Neither Sony Corporation nor Sony China had any involvement with, and neither participated in, the creation or development of the Green Dam software. Akahane Decl., ¶ 6; Hagiwara Decl., ¶ 5. Additionally, neither Sony Corporation nor Sony China had any involvement with or participation in the decision to implement the Green Dam program or the timing of the Green Dam program. Id.

VAIO Computers in China. All VAIO computers sold in China in 2009 were manufactured in third party factories located in China or Japan. Hagiwara Decl., ¶ 7. Any software contained on those computers at the time of sale was pre-installed at the factory where the computer was manufactured (i.e., in China or Japan), by employees of these factories (and not by Sony Corporation or Sony China). Id., ¶ 9. After VAIO computers destined for sale in China are manufactured, they are shipped to a warehouse in Shanghai, China. Id., ¶ 7. From there, the computers are distributed by Sony China (not Sony Corporation) to wholesalers, retailers, and consumers in China. Id.; Akahane Decl., ¶ 5.

As a result of the foregoing, any relevant information concerning the distribution of VAIO computers in China, Green Dam, or the Green Dam Mandate likely is possessed by Sony China (or by third parties such as the factories where the computers were manufactured), not Sony Corporation (whose documents, in any event, are in Japan). Akahane Decl., ¶¶ 7, 9; Hagiwara Decl., ¶ 9. Any documents possessed by Sony China pertaining to its distribution or sale of VAIO computers in China or the Green Dam program are in China. Hagiwara Decl., ¶¶ 9-11. Sony China does not distribute any computers to the United States, it does not possess any factories, offices, or computer systems or servers in the United States, and none of Sony China's employees, officers, or directors reside in the United States. Hagiwara Decl., ¶¶ 4, 8.

The Lawsuit. Plaintiff is a California limited liability company that claims to be engaged in developing and marketing an Internet filtering program known as "CYBERsitter." Complaint, ¶ 2. On or about June 15, 2009, attorneys for Plaintiff

1 sent a series of cease-and-desist letters (in English) to various computer
2 manufacturers, including Sony Corporation (but not to Sony China), claiming that
3 portions of CYBERSitter were infringed in Green Dam.⁵ Mayer Decl., Ex. D.

4 On August 11, 2009 (after the Green Dam Mandate had been initially
5 postponed and Green Dam had been updated), a different attorney for Plaintiff sent
6 a second letter to Sony Corporation and Sony Corporation of America (“SCA”)
7 (but again, not to Sony China), containing a list of 17 separate demands. Mayer
8 Decl., Ex. E. On August 27, 2009, SCA confirmed that “no computers containing
9 Green Dam ever were manufactured or sold in the United States by any Sony
10 entity. Nor was Green Dam ever installed on or copied to any computers in the
11 United States by any Sony entity.” Id., Ex. F. SCA also advised Plaintiff that its
12 “threatened claims involve alleged conduct that took place entirely outside the
13 United States, by a foreign entity, and at the direction of a foreign sovereign” and
14 thus were not appropriately brought in the United States. Id.

15 On January 5, 2010, Plaintiff filed its Complaint against the PRC, Jinhui,
16 Dazheng, and the seven Foreign Manufacturers. (Docket No. 1). The Complaint
17 alleges that the PRC, Jinhui, and Dazheng engaged in copyright infringement and
18 misappropriated Plaintiff’s trade secrets by using portions of CYBERSitter in
19 Green Dam and then causing Green Dam to be distributed to the public.

20 Plaintiff’s Complaint does not allege that the Foreign Manufacturers
21 participated in the development of Green Dam or engaged in any of the purported
22 trade secret misappropriation engaged in by the PRC, Jinhui, and Dazheng during
23 the development of Green Dam. Instead, Plaintiff premises its claims of liability

24 ⁵ On or about June 12, 2009, one of the Chinese Developers, Jinhui, released an
25 update to Green Dam (ver. 3.173). According to representatives of the Computer
26 Science and Engineering Division of The University of Michigan (whose findings
27 form the basis for Plaintiff’s alleged infringement claims), “with the 3.173 update
28 installed, Green Dam no longer appears to employ the blacklist files derived from
CyberSitter. Instead, it uses an updated version of the adwapp.dat blacklist. This
list does not seem to be based on CyberSitter: it is over 6000 lines long and
contains only five lines in common with any of the CyberSitter blacklists.” Mayer
Decl., Ex. G.

1 against the Foreign Manufacturers entirely upon allegations that each of the
2 Foreign Manufacturers entered into agreements with the PRC “providing for the
3 distribution of Green Dam by [the Foreign] Manufacturers in China” (Complaint,
4 ¶ 49), were “designated as official distributors of the Green Dam product”
5 (Complaint, ¶ 50), and “commenced distribution of the Green Dam software no
6 later than on or about March 1, 2009” (Complaint, ¶ 53).

7 None of the Foreign Manufacturers is alleged to have violated United States
8 copyright law. Instead, each has been sued under Chinese copyright law.
9 Additionally, Plaintiff has asserted claims against Sony Corporation and Toshiba
10 under Japanese copyright law and against Acer, ASUSTeK, and BenQ under
11 Taiwanese copyright law. Each of these copyright claims arises from the identical
12 allegations that:

13 Defendants...have infringed Plaintiff’s copyrights in the Copyrighted
14 Works by reproducing, publishing, distributing, disseminating on
15 information networks, leasing, and making available to the public
16 works embodying the Copyrighted Works without authorization, and
17 have not attributed authorship of the Copyrighted Works to Plaintiff,
all in violation of Plaintiff’s rights under [Chinese, Japanese, or
Taiwanese] copyright law.

18 Complaint, ¶¶ 92, 106. Although the Foreign Manufacturers (including Sony
19 Corporation) are not alleged to have engaged in *any* conduct within the United
20 States, in an effort to manufacture a claim against them under United States law,
21 Plaintiff has named each of them in its First and Second Claims for
22 Misappropriation and Unfair Competition, premised on the legally and factually
23 specious allegations that they “acquired” Plaintiff’s trade secrets when they were
24 provided with Green Dam by the Chinese Developers and “used” them by
25 “distributing the Green Dam software” (*in China*). Complaint, ¶ 61.

26 **Status of the Litigation.** At present, the only defendants that have appeared
27 in the action are the Taiwanese defendants (Acer, ASUSTek, and BenQ), which
28 answered the Complaint on July 1, 2010. (Docket Nos. 19, 21, 23). Sony

Corporation is advised that the Taiwanese defendants and Toshiba will join this Motion. Toshiba (the only other Japanese defendant) also has given notice of its intention to file a motion to dismiss the claims against it for lack of personal jurisdiction. The PRC, Jinhui, Dazheng, and the Chinese Foreign Manufacturers have not been served in this action. Rather, Plaintiff has confirmed that it has been unable to serve these defendants. Notwithstanding that service has not been effectuated, on August 17, 2010, Plaintiff filed a motion for default (Docket No. 35) which Lenovo Group Limited opposed (Docket No. 39). The default Motion has been taken under submission. (Docket No. 47). No discovery has yet occurred in this action, and the parties' Rule 26 conference has not yet taken place.

II. THE ACTION SHOULD BE DISMISSED UNDER THE DOCTRINE OF *FORUM NON CONVENIENS*.

Under the federal common law doctrine of *forum non conveniens*:

when an alternative forum has jurisdiction to hear the case, and when the trial in the chosen forum would establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience, . . . the court may, in the exercise of its sound discretion, dismiss the case.

Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981) (internal citations and quotations omitted).

Courts will grant a *forum non conveniens* motion when the following two criteria are met: "(1) the existence of an adequate alternative forum, and (2) that the balance of private and public interest factors favors dismissal." Lockman, 930 F.2d at 767; Lueck v. Sundstrand Corp., 236 F.3d 1137, 1142 (9th Cir. 2001) (same). Both of these factors weigh overwhelmingly in favor of dismissal of Plaintiff's complaint.

1 **A. A Court In China Is An Adequate Alternative Forum.**

2 “The first requirement for a forum non conveniens dismissal is that an
3 adequate alternative forum is available to the plaintiff.” Lueck, 236 F.3d at 1143.
4 An adequate alternative forum ordinarily exists when the defendant is amenable to
5 service of process in the foreign forum. See, e.g., Piper Aircraft, 454 U.S. at 254
6 n.22; Lockman, 930 F.2d at 768 (“Because the record shows that [defendant] has
7 agreed to submit to Japanese jurisdiction, . . . the threshold test [of adequacy] is
8 satisfied.”); see also Contract Lumber Co. v. P.T. Moges Shipping Co., 918 F.2d
9 1446, 1450 (9th Cir. 1990) (forum adequate when dismissal conditioned on
10 defendant’s “consent to the jurisdiction of the Philippine courts, and that it waive
11 any defense of statute of limitations”). Sony Corporation (although not a proper
12 party even in China) will not contest jurisdiction with respect to this particular
13 matter in China, and will agree to the tolling of the applicable statute of limitations
14 as of January 5, 2010, when the Complaint was filed. Sony Corporation is advised
15 that Toshiba Corporation and the Taiwanese defendants will do so as well.

16 Indeed, while the Plaintiff can file a lawsuit in China against *all* relevant
17 parties, if this action proceeds in this Court it is likely that many of the defendants
18 will not be subject to service or jurisdiction here, and cannot be compelled to
19 participate in the action. As noted, Toshiba Corporation intends to contest
20 personal jurisdiction. The PRC, the Chinese Developers, and Lenovo and Haier
21 have not been served at all. Moreover, even if the PRC elected voluntarily to
22 appear in this action (which is unlikely), it almost certainly is entitled to sovereign
23 immunity and immune from suit in the United States. See Morris v. People’s
24 Republic of China, 478 F. Supp. 2d 561, 566-71 (S.D.N.Y. 2007) (dismissing
25 claims against PRC as barred by the Foreign Sovereign Immunities Act); see
26 generally Saudi Arabia v. Nelson, 507 U.S. 349, 355 (1993) (“[A] foreign state is
27 presumptively immune from the jurisdiction of United States courts...”). In the
28 absence of these defendants – especially the PRC, Dazheng and Jinhui – complete

1 relief is not available in this Court, and, irrespective of whether this action
2 proceeds, Plaintiff will be required to pursue a separate action in China in order to
3 obtain relief against these defendants. Additionally, the Court will, in essence, be
4 required to adjudicate the secondary copyright issues (i.e., the liability of the
5 Foreign Manufacturers for distributing Green Dam), without being able to
6 adjudicate or receive evidence on the primary issues, such as those relating to the
7 creation and development of Green Dam and its source code.

8 There also is no practical or equitable reason why this action cannot be
9 adjudicated in China. It is well established, and beyond reasonable dispute, that
10 China possesses a functioning and independent judiciary that is capable of
11 adjudicating civil disputes such as this one. See 1 M. Nimmer & P. Geller,
12 International Copyright Law and Practice § 8[3][a] (2009 rev.) (discussing various
13 tribunals available in China for copyright cases); Declaration of Jacques deLisle
14 (“deLisle Decl.”), ¶¶ 31-46 (discussing Chinese court system and procedure); see
15 also Guimei v. General Elec. Co., 172 Cal. App. 4th 689, 701 (2009) (affirming
16 finding that “Chinese courts... are in fact capable of adjudicating complex product
17 liability claims. The judges and attorneys are well educated and sophisticated, and
18 they have experience in complex, multiparty litigation...”). Chinese courts possess
19 a sophisticated set of rules and procedures governing the methods for obtaining,
20 introducing, and handling evidence, including procedures to compel the production
21 of evidence and for cross-examination. deLisle Decl., ¶¶ 31-37. Chinese courts
22 also possess effective procedures for enforcing and reviewing judgments. Id.,
23 ¶¶ 38-40. Given the nature of this dispute, if filed in China it is likely that it would
24 be heard by a specialized intellectual property panel of the intermediate or high
25 court of Beijing, which are acknowledged to be among the best courts in China.
26 Id., ¶¶ 47-53. These courts would fairly and effectively adjudicate this dispute, just
27 as they adjudicate many other copyright and intellectual property matters,
28 including those involving foreign plaintiffs. Id., ¶¶ 53-57.

1 There also is no dispute – and, in fact, by suing under Chinese law Plaintiff
2 has acknowledged – that the Chinese legal system provides adequate remedies for
3 Plaintiff’s claims. See Lockman, 930 F.2d at 768 (forum is adequate if it offers the
4 plaintiffs “a remedy for their losses”); Creative Tech., Ltd. v. Aztech Sys. Pte, Ltd.,
5 61 F.3d 696, 701 (9th Cir. 1995) (“We conclude that the Singapore Copyright Act
6 offers Creative an adequate alternative remedy independent of United States
7 copyright law.”). Plaintiff alleges in its Complaint that its works “are protected
8 under the Copyright Law of the People’s Republic of China” and that China
9 possesses a robust set of copyright laws that “protect[] both the economic rights
10 and moral rights of the owner of copyrighted works, including computer software
11 and written works.” Complaint, ¶¶ 90, 91 (quoting extensively from Chinese
12 copyright statutes). In fact, the nature of protection and relief provided under
13 Chinese copyright law largely parallels and is in many respects equivalent to that
14 provided under United States law. deLisle Decl., ¶¶ 13-21. Plaintiff also
15 recognizes that China is a signatory to the two major international agreements on
16 intellectual property rights: the Berne Convention for the Protection of Literary and
17 Artistic Works (which requires its member states to implement copyright laws that
18 meet certain minimum standards) and the Agreement on Trade Related Aspects of
19 Intellectual Property Rights (TRIPS). Complaint, ¶ 90; see also deLisle Decl., ¶¶
20 22-24. Chinese courts have adjudicated (and are competent to adjudicate) complex
21 copyright disputes and will impose liability against infringers when appropriate,
22 including in cases brought by foreign plaintiffs. deLisle Decl., ¶¶ 53-57. Plaintiff
23 admits as much, citing and quoting the Chinese judicial decision Shanghai Push
24 Sound Music & Entertainment Co., Ltd. v. Beijing Kuro Music Software
25 Development Co., Ltd., for support of its claims. Complaint, ¶ 93.

26 For the foregoing reasons, virtually every court that has considered the issue
27 – including the United States Supreme Court – consistently has found that courts in
28 China provide an adequate alternative forum for *forum non conveniens* purposes.

1 See, e.g., Sinochem, 549 U.S. at 435 (dismissal in favor of Chinese forum was “a
2 textbook case for immediate *forum non conveniens* dismissal”); Compania
3 Naveria, 569 F.3d at 205 (dismissing action on *forum non conveniens* grounds
4 where Chinese forum provides “analogous” remedy to that provided by a U.S.
5 forum); Tang v. Synutra Int’l, Inc., No. 09-0088, 2010 WL 1375373, at *9-11 (D.
6 Md. Mar. 29, 2010) (China is a proper forum, notwithstanding Plaintiffs’ claims
7 that the Chinese courts were delaying the proceedings). There is no reason for this
8 Court to depart from this line of authority.

9 Finally, the presence of the PRC or entities allegedly affiliated with the PRC
10 as defendants in the action is factually and legally irrelevant. Chinese courts
11 routinely adjudicate matters involving state-owned enterprises or Chinese
12 governmental entities and, in fact, plaintiffs frequently prevail against such entities,
13 including in actions involving intellectual property. deLisle Decl., ¶¶ 58-64.
14 Additionally, in light of the nature of this action and China’s ongoing efforts to
15 meet its international intellectual property obligations, it is likely that this case will
16 be handled in a particularly careful and balanced manner. Id., ¶¶ 68-74.

17 United States courts frequently have held that the presence or involvement
18 of a foreign state (including the PRC) or state-owned enterprise in a lawsuit is
19 insufficient to render the courts in that foreign state “inadequate.” See, e.g., China
20 Tire Holdings, Ltd. v. Goodyear Tire & Rubber Co., 91 F. Supp. 2d 1106, 1111
21 (N.D. Ohio 2000) (dismissing action in favor of Chinese forum where “the case
22 involves alleged statements made to officials of the PRC” and concerns Chinese
23 government contracts); see also, e.g., Monegasque De Reassurances S.A.M.
24 (monde Re) v. Nak Naftogaz of Ukr., 311 F.3d 488, 499 (2d Cir. 2002) (“It is
25 hardly unusual, considering the number of state-owned business entities
26 throughout the world, for a finding of *forum non conveniens* to be made in favor of
27 the forum of a state whose entity is a party litigant.”); Forsythe v. Saudi Arabian
28 Airlines Corp., 885 F.2d 285, 291 (5th Cir. 1989) (dismissing action against state-

owned corporation in favor of Saudi Arabian forum). To the contrary, “courts have rightly been reluctant to cast [] aspersions on foreign judicial systems absent a *substantial* showing of a lack of procedural safeguards.” Tang, 2010 WL 1375373 at *9 (emphasis added). Indeed, as further discussed below, the presence of the PRC in this action weighs in favor of transfer, so that issues that impact the PRC (including issues of sovereign immunity and the interplay of its ministry policies and the civil law) can be decided by a Chinese court familiar with such principles.⁶

B. The Private And Public Interest Factors Weigh Decidedly In Favor Of Dismissal.

Because China is an adequate alternative forum, dismissal is warranted if the balance of conveniences and the public interests involved weigh in favor of dismissal. See Altmann, 317 F.3d at 973. These include:

both the “private interest” factors affecting the convenience of the litigants, including all “practical problems that make trial of a case easy, expeditious and inexpensive,” as well as the “public interest” factors affecting the convenience of the forum, which include the administrative difficulties flowing from court congestion; the local interest in having localized controversies resolved at home; the interest in having the trial of a diversity case in a forum that is familiar with the law that must govern the action; the avoidance of unnecessary problems in conflicts of law, or in application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Id., quoting Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947). While no single factor is dominant and all factors should be weighed together, Lueck, 236 F.3d at 1145-46, in this case *every one* of the private and public interest factors overwhelmingly favors dismissal.

⁶ In light of the robust and sophisticated legal system in China, whether there are some procedural differences between the Chinese and U.S. legal systems is irrelevant. Altmann v. Republic of Austria, 317 F.3d 954, 972 (9th Cir. 2002); Lockman, 930 F.2d at 768 (Japan was an adequate alternative forum even though Japan does not conduct jury trials or pretrial discovery, gives appellate courts de novo review of facts, and does not recognize RICO or Lanham Act claims).

1 **1. The “Public Interest” Factors.**

2 This case concerns alleged conduct engaged in by foreign entities entirely
3 outside the United States, and the claims thus arise almost entirely under foreign
4 law. As a result, this Court has very little, if any, connection to the underlying
5 dispute and little interest in any of the legal principles implicated. See Lockman,
6 930 F.2d at 771 (controversy had “a large connection to Japan and little connection
7 to California because all claims were related to the translation and distribution of
8 Bibles in Japan”); Villar v. Crowley Mar. Corp., 782 F.2d 1478, 1483 (9th Cir.
9 1986) (affirming dismissal of action arising from shipping accident that occurred in
10 Saudi Arabian waters, because “American jurors and court personnel have little
11 interest in this controversy”); Murray v. British Broad. Corp., 906 F. Supp. 858,
12 865-66 (S.D.N.Y. 1995) (dismissing copyright infringement action where events
13 giving rise to the litigation occurred in England).

14 In contrast to the nominal interest that this Court possesses in this
15 controversy, the burden that would be imposed on this Court in litigating this
16 action is substantial. Key documents are in Chinese or Japanese and key witnesses
17 are native Chinese or Japanese speakers who reside in China (and, to a lesser
18 extent Taiwan or Japan). Thus, extensive translation of documents and testimony
19 would be required. Additionally, the gravamen of this case arises under Chinese
20 law, and, in fact, although Plaintiff also has made claims under Taiwanese and
21 Japanese copyright law, none of the Foreign Manufacturers has been sued under
22 United States copyright law. See Tang, 2010 WL 1375373 at *13 (dismissing case
23 where court would be required to apply Chinese law); Moletch Global Hong
24 Kong Ltd. v. Pojery Trading Co., No. 09-00027, 2009 U.S. Dist. LEXIS 88531, at
25 *14-16 (N.D. Cal. Sept. 25, 2009) (need to apply Taiwanese law weighed “heavily
26 in favor of dismissal”); ITSI T.V. Prods., Inc. v. Cal. Auth. of Racing Fairs, 785 F.
27 Supp. 854, 866-67 n.20 (E.D. Cal. 1992) (the “exercise of jurisdiction over such a
28 claim would work an extreme hardship on the court in discerning and applying

1 Mexican law”), rev’d on other grounds sub nom ITSI T.V. Prods., Inc. v. Agric.
2 Ass’ns, 3 F.3d 1289 (9th Cir. 1993); Nai-Cho v. Boeing Co., 555 F. Supp. 9, 21
3 (N.D. Cal. 1982) (“[T]his court finds it quite possible that Chinese law would be
4 applied to this action, and thus that the action is more appropriately tried by a court
5 familiar with Chinese law.”); see generally Piper Aircraft, 454 U.S. at 260
6 (collecting cases granting dismissal where foreign law involved). Analysis and
7 application of Chinese law (in addition to Japanese and Taiwanese law) would
8 require expert witnesses, extensive translation of relevant laws and statutes, and,
9 potentially, translators for each expert witness. To require this Court, and a
10 California jury, to make decisions under these foreign laws – in a case where all of
11 the relevant events occurred overseas and all of the defendants are in Asia – makes
12 little sense, especially where an alternative forum exists that is familiar with the
13 legal principles involved. See Murray, 906 F. Supp. at 865 (where events occurred
14 abroad and forum was unrelated to the dispute, “the need to apply foreign law []
15 militates in favor of dismissal”).

16 Perhaps most importantly, China has a very strong interest – and, in fact, a
17 direct stake – in this dispute: the PRC and several Chinese companies (as well as
18 companies that do business in China) are defendants in the action, and Plaintiff’s
19 claims are premised entirely on software commissioned by the PRC, allegedly
20 created by Chinese companies, and distributed in China pursuant to the Green Dam
21 Mandate. China, of course, has a significant interest in developing, applying, and
22 interpreting its own laws. See Lockman, 930 F.2d at 771 (“Japan [has an] interest
23 in matters relating to Japanese copyrights.”); see also deLisle Decl., ¶¶ 75-79. This
24 is especially true in this case, as adjudication of this dispute involves a number of
25 complex and important Chinese legal issues such as:

26 • The relationship between the Green Dam Mandate and Chinese
27 copyright law, including whether a party can be held to violate Chinese copyright
28 law when it is following a mandate issued by the Chinese government.

1 • Whether the PRC is entitled to sovereign immunity from claims of
2 copyright infringement under Chinese law. If so, it must be determined whether
3 that immunity applies in this case and whether it may apply to limit the liability of
4 private entities acting pursuant to an administrative mandate of the Chinese
5 government.

6 • The manner in which potential conflicts between Chinese law, on the
7 one part, and Japanese and Taiwanese law, on the other part, are to be addressed,
8 including in circumstances where conduct authorized under Chinese law is alleged
9 to violate those countries' copyright laws.

10 • The scope of damages (and indemnification for such damages) for
11 claims of copyright infringement arising from the development or distribution of
12 allegedly infringing works with the express authorization of, or license from, the
13 PRC or other Chinese governmental entities.

14 These important issues of Chinese law and sovereignty are best adjudicated
15 in a Chinese court, with input from the Chinese defendants. See Voda v. Cordis
16 Corp., 476 F.3d 887, 901-03 (Fed. Cir. 2007) (declining to adjudicate foreign law
17 claims where doing so “could prejudice the rights of the foreign governments” and
18 “disrupt their foreign procedures”); Vanity Fair Mills, Inc. v. T. Eaton Co., 234
19 F.2d 633, 646 (2d Cir. 1956) (declining to exercise supplemental jurisdiction over
20 claim questioning validity of foreign trademark registration); Intercontinental
21 Dictionary Series v. Gruyter, 822 F. Supp. 662, 680 (C.D. Cal. 1993) (public
22 interest favored Australian forum where complaint alleged Australian government
23 funded infringing works). This is especially true given the absence of the key
24 players (including the PRC) and the absence of any U.S. conduct or U.S.
25 defendant. See Vanity Fair Mills, 234 F.2d at 646 (judicial “power should be
26 exercised with great reluctance when...the exercise of such power is fraught with
27 possibilities of discord and conflict with the authorities of another country.”).

1 In China Tire, 91 F. Supp. 2d at 1106, the court considered similar issues in
2 a dispute between two tire companies concerning their competing efforts to do
3 business with a government-controlled Chinese tire manufacturer for the sale of
4 products in China. The plaintiff filed a lawsuit in the Central District of California,
5 claiming that the defendant had engaged in a variety of unfair and unlawful
6 business practices, including giving improper gifts to Chinese government officials
7 and their families in order to influence the manufacturer. The Court dismissed the
8 action on the grounds of *forum non conveniens*. While plaintiff's appeal was
9 pending, it filed a second action in the Northern District of Ohio. The Ohio district
10 court also dismissed the action, finding that the earlier decision was correct and
11 entitled to preclusive effect. In so doing, the Ohio district court (quoting this
12 Court) highlighted the relative interests of the United States and China in the
13 dispute:

14 This case involves alleged statements made to officials of the
15 PRC...government about a Bermuda corporation with its
16 headquarters in Hong Kong in an attempt to obtain a PRC
17 government contract. The interest of a Chinese court to adjudicate
18 matters regarding its own government contracts far outweighs the
19 small interest that American courts have in adjudicating this matter.

20 Id. at 1111.

21 Plaintiff's only apparent justification for filing its lawsuit in the United
22 States is that Plaintiff is located here. But this fact alone "should not be given
23 dispositive weight." Piper Aircraft, 454 U.S. at 255 n.23; Lockman, 930 F.2d at
24 767 ("We have recognized that the presence of American plaintiffs...is not in and
25 of itself sufficient to bar a district court from dismissing a case on the ground of
26 *forum non conveniens*.... In practice, the cases demonstrate that defendants
27 frequently rise to the challenge of showing an alternative forum is the more
28 convenient one."). Plaintiff's residence by itself cannot suffice to require ten
foreign entities to defend in a United States court, before a U.S. jury, claims for
violation of foreign laws arising from conduct allegedly undertaken by these

1 entities outside of the United States pursuant to the PRC's Green Dam Mandate.⁷
2 See Nai-Cho, 555 F. Supp. at 21 ("The federal courts have not felt constrained to
3 retain jurisdiction over predominantly foreign cases involving American plaintiffs
4 where an examination of the [public and private interest] factors demonstrated that
5 the action is more appropriately brought in a foreign forum.").

6 Finally, Plaintiff cannot manufacture a connection between this Court and its
7 claims in this action merely by alleging that the Foreign Manufacturers "used"
8 Plaintiff's trade secrets (and thereby purportedly violated California law) when
9 they distributed *in China* personal computers pre-installed with Green Dam or by
10 asserting specious claims against certain defendants (not Sony Corporation or the
11 other Foreign Manufacturers) under the United States Copyright Act. Because all
12 of the conduct alleged to give rise to Plaintiff's claims took place outside the
13 United States, this Court (and a California jury) have no more interest in the trade
14 secret or unfair competition claims than in the foreign copyright claims. In
15 addition, the trade secret claims are legally meritless, and for that reason as well
16 should be accorded little, if any, weight. See Silvaco Data Sys. v. Intel Corp., 184
17 Cal. App. 4th 210, 224 (2010) ("Strong considerations of public policy reinforce
18 the common-sense conclusion that using a product does not constitute a 'use' of
19 trade secrets employed in its manufacture. If merely running finished software
20 constituted a use of the source code from which it was compiled, then every
21 purchaser of software would be exposed to liability if it were later alleged that the
22 software was based in part upon purloined source code."). As for the claims under

23
24 ⁷ If Plaintiff's residence alone were sufficient to require the Court to exercise its
25 jurisdiction, then United States courts would be compelled to adjudicate *every*
26 instance in which a copyright owned by a U.S. citizen was infringed abroad. On
27 the contrary, United States plaintiffs (including, for example, the Walt Disney Co.
28 and Starbucks Corp.) routinely litigate copyright infringement matters in China.
deLisle Decl., ¶¶ 53-56. United States courts permit only the most extraordinary
foreign copyright disputes to be adjudicated in the United States – for example,
those in which there is "*no* foreign forum in which defendant is the subject of
personal jurisdiction." London Film Prod.s Ltd. v. Intercontinental Commc'ns,
Inc., 580 F. Supp. 47, 50 (S.D.N.Y. 1984) (emphasis added).

1 the United States Copyright Act, they are asserted only against the PRC and the
2 Chinese Developers. None of these parties has appeared in the action, and it is
3 unlikely that these claims (to the extent they are even properly brought) will be
4 actually litigated.

5 **2. The “Private Interest” Factors.**

6 The “private interest” factors include “(1) the residence of the parties and the
7 witnesses; (2) the forum’s convenience to the litigants; (3) access to physical
8 evidence and other sources of proof; (4) whether unwilling witnesses can be
9 compelled to testify; (5) the cost of bringing witnesses to trial; (6) the
10 enforceability of the judgment; and (7) ‘all other practical problems that make trial
11 of a case easy, expeditious and inexpensive.’” Lueck, 236 F.3d at 1145, quoting
12 Gulf Oil, 330 U.S. at 508. Additionally, where the Court cannot compel the
13 production of relevant evidence from the alternative forum, that weights heavily in
14 favor of dismissal on *forum non conveniens* grounds. See Lueck, 236 F.3d at
15 1147. Each of the “private interest” factors weighs in favor of dismissal here.

16 **Location of the Parties.** Each of the ten defendants is located, and has its
17 principal place of business, in China, Japan, or Taiwan. As noted above, five of
18 these defendants (the PRC, the two Chinese Developers, Lenovo, and Haier) have
19 yet to be served. Only Plaintiff resides in the United States.

20 **Location of the Witnesses.** All of the witnesses relevant to Sony
21 Corporation’s defense of this action, including all of the representatives of Sony
22 China, are located in China or Japan. This includes a number of third-party
23 witnesses, such as:

24 • Employees of the factories where computers alleged to have been pre-
25 installed or otherwise shipped with Green Dam were manufactured. Hagiwara
26 Decl., ¶ 7.

27

28

1 • Independent retailers and wholesalers who distributed computers
2 manufactured and sold by Sony China or the Foreign Manufacturers. Hagiwara
3 Decl., ¶ 7.

4 • Representatives of the MIIT responsible for the issuance of the Green
5 Dam Mandate.

6 These third-party witnesses are outside the subpoena power of this Court,
7 and thus cannot be compelled to testify in the United States. See Tang, 2010 WL
8 1375373 at *12 (“[T]he Chinese forum would have the power to compel the
9 testimony of unwilling witnesses and the cost of producing willing witnesses
10 would be significantly reduced there. The present forum, by contrast, could not
11 compel the testimony of Chinese witnesses and would pose substantial expense
12 and inconvenience.”); see also Lueck, 236 F.3d at 1146-47 (“[M]any of the New
13 Zealand documents and witnesses are under the control of the New Zealand
14 government or Ansett. The district court does not have the power to order the
15 production or appearance of such evidence and witnesses.”); Lockman, 930 F.2d at
16 770 (defendant “cannot force [witnesses in Japan] to testify in the United States”).
17 Further, deposing representatives of any of the Chinese, Japanese, or Taiwanese
18 defendants would require compliance with the Hague Convention on Taking
19 Evidence Abroad, which is a time-consuming and burdensome process. See
20 deLisle Decl., ¶¶ 82-84.

21 **Burden on the Witnesses and Parties.** It would be extremely costly and
22 burdensome for representatives of Sony Corporation or Sony China to travel to the
23 United States for this lawsuit. Akahane Decl., ¶ 8; Hagiwara Decl., ¶ 12. Travel to
24 California from China (and Taiwan) requires a more than 15 hour plane flight (and
25 the flight from Japan is only slightly less). Any witnesses from China (including
26 representatives of Sony China) also would need to obtain the proper (B1) visa
27 before traveling to the United States, which can be an expensive and time-
28 consuming task. Hagiwara Decl., ¶ 12. Jose v. M/V Fir Grove, 801 F. Supp. 349,

1 352-53 (D. Or. 1991) (in considering private interest factors in employment-related
2 action, court gave weight to fact that individuals “may not be able to obtain visas
3 to come to the United States for trial”). Even assuming the appropriate visas could
4 be obtained for all of the Chinese witnesses (which is far from a certainty), the cost
5 of bringing these witnesses to the United States would be significant, and would
6 include plane fare, meals and lodging, transportation, and English translators. See
7 Blanco v. Banco Indus. de Venezuela, 997 F.2d 974, 982 (2d Cir. 1993) (private
8 interest factors favor dismissal where most witnesses and physical and
9 documentary evidence are located in other forum).

10 Between the three Taiwanese and two Japanese defendants alone, it is likely
11 that no fewer than 15 or 20 witnesses and party representatives (3 or 4 for each
12 defendant) would be required to travel to the United States for trial. That is in
13 stark contrast to the Plaintiff’s much lesser burden if the case were litigated in
14 China, which likely would be limited to the transportation of a company
15 representative and, at most, one or two witnesses concerning its copyright
16 ownership and certain technical issues. See China Tire, 91 F. Supp. 2d at 1111
17 (“Bringing [Chinese] witnesses into a Chinese forum will be far easier and less
18 expensive than would be bringing them to the United States for trial.”).

19 **Location of the Evidence.** All of the evidence concerning the distribution
20 and sale of VAIO computers in China is located in China. Hagiwara Decl., ¶ 12.
21 Most of the evidence concerning the creation and development of Green Dam, the
22 licensing of Green Dam to the Foreign Manufacturers, and Plaintiff’s damages
23 (which is likely to require evidence of the reasonable value of a license for
24 CYBERSitter in China and the number of units of Green Dam distributed in China)
25 also is located in China. Thus, this factor weighs strongly in favor of dismissal.
26 See Lockman, 930 F.2d at 770 (where evidence required to defend against
27 copyright claim was in Japan, dismissal granted); see also Murray, 906 F. Supp. at
28 863 (“[A]ll of the physical and documentary evidence is in England.”); Creative,

1 61 F.3d at 703 (affirming dismissal where “all of the records and the majority of
2 witnesses involved in the manufacture of the alleged [infringing products] are
3 located in Singapore”). The only relevant evidence located in the United States is
4 evidence pertaining to Plaintiff’s ownership of the CYBERSitter software. That
5 issue is not likely to be heavily contested. In any event, proving such ownership
6 would require only minimal testimony (e.g., copyright registrations or chain-of-
7 title documents) that easily can be transported to China.

8 **Prejudice to the Parties.** The prejudice to Sony Corporation (and, indeed,
9 to all of the defendants, especially the Foreign Manufacturers) if this case were to
10 remain in the United States is obvious and manifest. Sony Corporation’s trial
11 presentation (and that of the other Foreign Manufacturers) would be seriously
12 impaired if it could not present evidence through live witness testimony, either
13 because third-party witnesses would not be subject to the subpoena power of this
14 Court (or were not able to obtain visas timely or at all) or because the Chinese
15 defendants have not appeared in the action. See Nai-Cho, 555 F. Supp. at 18
16 (“compelling the litigants to try their case without the benefit of live testimony
17 from important witnesses would impose a serious hardship upon them and upon
18 this Court”); Murray, 906 F. Supp. at 864 (“live presentation will be crucial to
19 allow the jury to evaluate the credibility of witnesses whose testimony conflicts.”)
20 More critically, if the case proceeds in this Court it is likely that Sony Corporation
21 (and the other Foreign Manufacturers) will be completely unable to obtain (far less
22 present at trial) critical documentary and testimonial evidence, including evidence
23 concerning the creation of Green Dam, the role of the MIIT and PRC in connection
24 with the creation and distribution of Green Dam, and the nature of the technical
25 changes made to Green Dam during May and June 2009 (including in response to
26 claims made by Plaintiff in June 2009). deLisle Decl., ¶ 82. China Tire, 91 F.
27 Supp. 2d at 1111 (“[D]iscovery by American attorneys in the PRC may prove to be
28 impossible”). Any prejudice to Plaintiff if this Motion is granted is far

1 outweighed by the collective prejudice to the Foreign Manufacturers if this case
2 remains in this Court.

3
4 **Conclusion**

5 For the foregoing reasons, Sony Corporation respectfully requests that the
6 Court grant this Motion and dismiss the action in its entirety on the grounds of
7 *forum non conveniens*.

8
9 Dated: September 13, 2010

KARIN G. PAGNANELLI
MARC E. MAYER
MITCHELL SILBERBERG & KNUPP LLP

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12 By: /s/ Marc E. Mayer
13 Marc E. Mayer
14 Attorneys for Defendant
15 SONY CORPORATION
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